IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 18394 of 2004

Between:

Smt.B.M.Indiramma, w/o B.M.Ranganna,
Nandini Mahila Sangam, Velugu DPIP, Fair Price Shop Dealer,
Adavigollapalli Village, Settur Mandal, Ananthapur District.

..... PETITIONER

AND

1 The Mandal Revenue Officer, Settur Mandal, Ananthapur District.
2 The Revenue Divisional Officer, Ananthapur.
3 O. Sudamani W/o. Anandappa
Adavigollapalli village, Settur Mandal, Anantapur dist.
(R3 is impleaded as per court order dt. 24-11-2004 in WPMP 27700 of 2004).

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction mostly one which is in the nature of writ of mandamus declaring the proceedings Rc.No.1753/2004/F, dated 26-08-2004 of the 2nd respondent is illegal, irregular, arbitrary, unconstitutional, violative of principles of natural justice, unjustified and unsustainable and set aside the same holding that the petitioner is entitled to continue as fair price shop dealer of Adavigollapalli Village, Settur Mandal, Ananthapur District

Counsel for the Petitioner: MR.P.VEERA REDDY

Counsel for the Respondents No. 1 &2 : GP FOR CIVIL SUPPLIES

Counsel for the Respondent No.3: MR. K.G. KRISHNA MOORTHY

The Court made the following :

Oral order:-

Heard the learned counsel for the petitioner, learned Government for 1st and 2nd respondents and the learned counsel representing the 3rd respondent.

The writ petition is filed challenging the order of the 2nd respondent dated 26-08-2004 removing the petitioner permanently from the dealership of the fair price shop of Adavigollapalli, Settur mandal, Anantapur district. The District Collector, Anantapur, by his proceedings dated 27-06-2003 sanctioned a new fair price shop for Adavigollapalli village, by bifurcating the existing fair price shop at Bachehalli village of Settur mandal. Considering the proposals of the 1st respondent for appointment of a temporary fair price shop dealer for the new fair price shop, the petitioner was considered eligible and as per the resolution of the District Food Advisory Committee, Anantapur and on the basis of the recommendation of the 1st respondent, was appointed as a temporary fair price shop dealer of the village. While so, the impugned order was issued removing her permanently from the dealership. In the order impugned, it is recorded that the petitioner had committed certain irregularities.

> *"1. The F.P. Shop dealer is selling the rice which was allotted to her to Rs.5-50 paise whereas the Government fixed as Rs. 5-25 paise. Since 5 months she is selling.*
>
> *2. The M.R.O. noticed that since 5 months she did not supply the rice for 5 card holders."*

The impugned order was passed without notice or opportunity to the petitioner and the order terminates her authorization to run the fair price shop permanently.

Pursuant thereto, by the orders of the 2nd respondent dated 04-10-2004, the 3rd respondent was appointed temporarily as fair price shop dealer of the village in the vacancy caused by the removal of the petitioner.

The impugned order permanently removing the petitioner from the dealership of Adavigollapalli village fair price shop was passed by the 2nd respondent without notice or opportunity to the petitioner and recording that the removal order is passed on account of the irregularities committed by the petitioner. No such order bringing about a termination of her authorization on the ground of misconduct could have been issued by the 2nd respondent without compliance with the principles of natural justice. Besides affecting the petitioner's legitimate expectation to function as fair price shop dealer on a temporary basis till a permanent arrangement is made for running the fair price shop, the impugned order casts a stigma on the petitioner. It is, therefore, essential for the 2nd respondent to have issued her a notice and afforded her atleast a minimul opportunity to rebut the allegations made against her before the impugned order was passed. The 3rd respondent was temporarily appointed due to the vacancy caused by the aforesaid illegal removal of the petitioner.

The learned counsel for the 3rd respondent contends, placing reliance on a decision of a Division Bench of this Court in *B. MAHESWARAMMA Vs. M. RAMASUBBAMMA* ([1]), that removal of the petitioner from the temporary dealership of a fair price shop on the ground of misconduct, is not illegal and that a temporary dealer is not entitled to any opportunity. A person, who has committed irregularities in the running of a fair price shop and that too a temporary fair price shop dealer, is not entitled to any notice or opportunity before termination of such temporary dealership, is the substance of the 3rd respondent's contention on the basis of the aforesaid judgment.

The facts, in brief, that fell for consideration of this court in *Maheswaramma's case* (supra) are that the dealership of a fair price shop was suspended, pending inquiry. The aggrieved dealer filed a writ petition challenging the order of suspension of her authorization. A learned single Judge granted an interim order permitting the petitioner to function as a dealer. As against the said interim order, the person, who was appointed temporarily to run the shop in the vacancy caused by the suspension of the permanent dealer, filed the writ appeal challenging the interim order granted

by the learned Single Judge. It is in these circumstances that the Division Bench of this court observed that an interim order ought not to have been granted by the learned single Judge, as a person, who had been subjected to a disciplinary action for wrong doing, ought not to be allowed to function in the office under an interim order granted by the court. As it is not the interest of the party alone, but the public interest of which is utmost importance, the Division Bench held, it was not a fit case for exercise of the discretion of granting an interim order.

The aforesaid decision has no application to the facts of this case. The authorization of the petitioner has been permanently cancelled. The temporary authorization of the petitioner to run the fair price shop has been permanently cancelled on the recorded ground that she had committed the specified irregularities in the running of the shop. The irregularities recorded to have been committed by the petitioner are thus the foundation for the exercise of the power of cancellation of the petitioner's authorization. No such recording or conclusion that the petitioner had committed the irregularities could have been arrived at without complying with the principle of natural justice – *Audi alteram partem*. This fundamental principle of natural justice is the safeguard against arbitrary or callous exercise of power.

The impugned order is unsustainable. It is accordingly set aside. It is, however, open to the 1st and 2nd respondents to proceed against the petitioner, if the circumstances so warrant, in accordance with law and after following the due procedure.

The writ petition is allowed, as above. There shall be no order as to costs.

GODA RAGHURAM, J

Dt. 30-12-2004

Pvks/*

That Rule nisi has been made absolute, as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief justice on this the 30th day of December, two thousand and four.

To

1 The Mandal Revenue Officer, Settur Mandal, Ananthapur District.
2 The Revenue Divisional Officer, Ananthapur.

3. 2CCs to the Government Pleader for Civil Supplies, A.P. High Court Buildings, Hyderabad. (OUT).

4. 2CD copies

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